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# **The career-building strategies of individual creators:**

## **A meta-analysis of qualitative research funded by CREATe**

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**Abstract**

This working paper presents a meta-analysis of CREATE-funded research relating to the activities of individual creators. The paper outlines the career-building strategies of individual creators, and assesses how creators' practice is changing in relation to advances in technology. The paper also provides insight into how individual creators understand copyright, and IP more generally. The paper argues that building a career in the creative industries remains a precarious venture, despite some twenty years of policy attention and government intervention. The paper also questions received wisdom regarding the primacy of intellectual property production as a measure of individual success, and as a driver of economic growth. Due to the centrality of copying to the functioning of certain creative sectors, creators sometimes copy others, and expect to be subject to a degree of copying themselves. The current copyright framework was seen as doing little to discourage infringement, as the cost of pursuing restitution was prohibitively high, and the returns that could be expected in the event of a successful claim were low.

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## 1. Introduction

CREATe is concerned with the future of creative production in an increasingly digital world. In particular, CREATe investigates the role that copyright plays in incentivising creative production, and whether creatives can earn a living from their talent. In the cultural, creative and digital sectors, microbusinesses and self-employed or freelance workers account for a large proportion of the labour force (Atladdottir et al. 2013). One of CREATe's objectives has been to investigate the activities of these individual creators, the better to understand the conditions under which they work.

In late 2015, I was asked by Martin Kretschmer and Philip Schlesinger to undertake a meta-analysis of CREATe-funded research concerned with the activities of individual creators. The CREATe directorate recognized that whilst the work packages funded under the first stage of CREATe's activities had, on their own terms, contributed significantly to our understanding of just how creatives create, some of CREATe's work had arguably received less attention than research relating explicitly to the economics of copyright and copyright law. Furthermore, as with any dispersed research consortium, there were limited opportunities to come together and discuss lines of congruence and divergence between individual projects. In response to this, a new work package was funded – titled 'Voices of CREATe' (hence, Voices) – that specifically sought to draw out the 'voices' of individual creators from across the seven interrelated themes addressed by the consortium.

Via a qualitative meta-analysis of both published material and unpublished primary data supplied by some of the work package leaders, I have constructed as comprehensive a picture as is feasible of CREATe's research into the activities of individual creators. Voices has benefited from the support of the CREATe directorate, as well as from the co-operation of individual work package leaders. The result is that in this paper the 'voices' of individual creators have been identified, scrutinized, and brought into conversation with one another as

a means of informing the research agenda concerning the creative economy and – hopefully – moving it forwards. This working paper forms one of the outputs of Voices, and covers a range of creative sectors including music, fashion, publishing, games, web-comics, and film. The paper is concerned almost exclusively with the UK context, as the majority of the work packages analysed were concerned with the activities of UK-based individual creators.<sup>1</sup>

The findings of Voices can be organised into three main themes, which I investigate in turn below: (1) how individual creators build a career in the creative industries; (2) how technology is changing the way that they work; and (3) how they understand copyright and IP more generally. In this respect, the research undertaken by CREATE academics speaks to persistent concerns about the reality of the conditions faced by many creative workers (see Banks and Hesmondhalgh 2009; Gill and Pratt 2008; Schlesinger et al. 2015), as well as questioning received wisdom regarding the primacy of intellectual property production as a measure of individual success, and as a driver of economic growth (Kretschmer et al. 2011).

## **2. Methodology**

As noted above, the methodology adopted for Voices was qualitative secondary analysis of both published material, and/or primary data curated by work package leaders. The methods adopted by researchers in their different work packages varied considerably, but all were qualitative in nature, allowing for comparison. The different methods adopted by work package leaders and researchers included structured and semi-structured interviewing, participant and non-participant observation, qualitative surveys, and ‘event research’ (McRobbie 2015).

Table 1 shows the work packages analysed for this study, and the type of material supplied by work package leaders. In this report, the ‘voices’ cited are linked first to their

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<sup>1</sup> With the notable exception of Angela McRobbie’s comparative investigation of the fashion ecologies of London, Berlin and Milan.

associated work package (e.g. WP1A.1), and second to the related document in which the quote or ethnographic note appears. Because the conventions relating to the identification of respondents vary considerably in different cases, respondents are identified by their role or job title throughout. Citations in parentheses in the text below generally refer to both the work package identifier and the author(s) of a related publication.

**Table 1: Work packages analysed**

Work package	Title of project	Lead institution/PI	Material supplied	Related documentation
WP1A.1	Managing intellectual property assets for creative SMEs (Part 1)	St Andrews/Barbara Townley	Published material	Grewer, M., Townley, B. and Young, E. 2016. <i>Tales From The Drawing Board</i> . St Andrews: Institute for Capitalising on Creativity.  Young, E., Berthold, H. and Townley, B. 2014. Intellectual property and copying: The attitudes of creatives. European Group of Organizational Studies (EGOS), Paper Development Workshop, Rotterdam, 2.7.2014
WP1A.2	Managing intellectual property assets for creative SMEs (Part 2)	St Andrews/Barbara Townley	Published material	See above
WP1E	Copyright and games	Edinburgh & Newcastle/Daithi Mac Sithig	Published material	Mac Sithig, D. 2014. Multiplayer games: Tax, copyright, consumers and the video game industries. <i>European Journal of Law and Technology</i> , 5(3): 1-19.  Phillips, T. 2016. Discussions with developers: F2P and the



				<p>changing landscape of games business development. In: Willson, M. and Leaver, T. Eds. <i>Social, Casual and Mobile Games: The Changing Gaming Landscape</i>. London: Bloomsbury, pp. 61-73.</p> <p>Phillips, T. 2015. 'Don't clone my indie game, bro': Informal cultures of videogame regulation in the independent sector. <i>Cultural Trends</i>, 24(2): 143-153.</p>
WP2A	Open user and creator platform	Nottingham/Liz Dowthwaite	Published material	<p>Dowthwaite, L. 2015a. When things go wrong, when things go right. Paper presented at the Electricomics symposium, University of Hertfordshire, 14.10.2015.</p> <p>Dowthwaite, L. 2015b. Fame or function? How web-comic artists choose where to share. Paper presented at the Ergonomics and Human Factors conference, Daventry, 14.4.2015.</p> <p>Dowthwaite, L. 2014. Web-comic artists' attitudes towards copyright and attribution. Paper presented at the CREATE All Hands conference, Glasgow, 15.9.2014.</p>

WP4C.1	Music copyright in the digital age	Glasgow/Kenny Barr	Published material and primary data	<p>Barr, K. 2016. Voices of CREATE submission. Glasgow: CREATE.</p> <p>Barr, K. 2013. Theorizing music streaming: Preliminary investigations. <i>Scottish Music Review</i>, 3(2): 1-20.</p>
WP4C.2	Copyright at the digital margins	UEA/John Street	Published material	<p>Phillips, T. and Street, J. 2015. Copyright and musicians at the digital margins. <i>Media, Culture &amp; Society</i>, 37(3): 342-358.</p> <p>Street, J. and Phillips, T. 2016. What do musicians talk about when they talk about copyright? <i>Popular Music and Society</i>, (online first edition), DOI: 10.1080/03007766.2015.1126099</p>
WP4C.3	Digitisation and the politics of copying in popular music culture	UEA/John Street, Goldsmiths/Keith Negus	Published material and primary data	<p>Negus, K., Street, J. and Behr, A. 2016. Voices of CREATE submission. London: CREATE.</p>
WP4D	Whose book is it anyway? IP, collaborative business models, and questions of ethics and creativity in digital publishing	Goldsmiths/Sarah Kember & Janis Jeffries	Published material	<p>Kember, S. and Jeffries, J. Eds. 2014. Publishing industry position papers. London: CREATE.</p>
WP4F	Fashion IP: From start-up to catwalk: A four city investigation	Goldsmiths/Angela McRobbie	Published material and primary data	<p>McRobbie, A. 2016. <i>Be Creative!</i> London: Polity.</p> <p>McRobbie, A. 2015. Fashion IP: Final report. London: CREATE.</p> <p>McRobbie, A. 2013. Fashion matters Berlin: City-spaces, women's working lives, new</p>

				social enterprise? <i>Cultural Studies</i> , 27(6): 982-1010.
WP9 KE	Copyright and the value of the public domain	Glasgow/Kris Erickson	Primary data	Erickson, K. 2016. Voices of CREATe submission. Glasgow: CREATe.

### 3. Building a career in the creative economy

Most businesses within the creative economy are microbusinesses, and increasingly, the creative economy is serviced by what De Peuter (2014: 264) has called a ‘reserve army’ of highly-skilled, highly-flexible labour – predominantly self-employed freelancers with ‘portfolio’ careers (Schlesinger and Waelde 2012: 22). Whilst none of the work packages analysed sought to investigate creators’ finances in any great detail, it was clear from the corpus of work analysed that even after two decades of targeted government intervention in the cultural, creative and digital industries, individual creators are – in the main – low-paid, precarious, and ultimately, marginal. Building a career in the creative industries is a long-term commitment, with no guarantee of financial stability. One of McRobbie’s interviewees – an Italian designer with many of the hallmarks of success (his collections had been featured in *Vogue*, and he had won a place on a prestigious fashion incubator programme in London) – gave an indication as to how narrow the profit margins were in his line of work, in a quote that resonated across much of the research discussed here:

I’m selling very little, and I have scarves in a shop [Darkroom]. It’s still very small and I’m looking for the right places to go. I don’t make a living out of it. The stuff I do is not very ready to wear.<sup>2</sup> I would wear my stuff but it’s more like special, maybe to go to a club or something. The scarves do sell well in

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<sup>2</sup> N.B. In fashion this does not mean the work is unfinished, rather it means that the work does not have an ‘off the peg’ appeal, and is unlikely to sell to the general public.

Darkroom. I will have to diversify more to make money. (WP4F; McRobbie 2015: np)

As noted above, a common theme across the work packages analysed was the idea of the ‘portfolio’ career, where creators are expected to juggle a number of different jobs or projects (creative and non-creative) in order to survive (Schlesinger and Waelde 2012: 22). Inherent in the building of a portfolio career is a commitment to flexibility, and the ability of creators to ‘tack and weave’ (WP4C.2; Negus et al. 2016: 1) dependent on the opportunities available. The designer quoted above states:

I graduated and freelanced for a few companies but realised I really wanted something that was mine. I still freelance. I’m not living off my own brand. I need to do a million jobs to support myself, to keep myself going. (WP4F; McRobbie 2015: np)

One of Erickson’s respondents – who had produced a graphic novel on the life of Charles Darwin – illustrated how complex creators’ income-generation strategies could be, particularly for freelancers and those who ‘worked-for-hire’:

Originally, [the graphic novel] was commissioned by the Bristol Cultural Development Partnership, which is a public/private partnership developing cultural activity in the Bristol area. The actual funding came from the Heritage Lottery Fund. How much it was – I can’t quite remember, but it was, in terms of paying me and the artist and the print bill, I think it came something in the range of £15,000, but I wouldn’t be certain about that. It started out with the 200<sup>th</sup> anniversary of Darwin’s birth and the 150<sup>th</sup> anniversary of the publication of *Origin of the Species* (sic), which was in 2009, and we created it. It was given away free around various towns and cities associated with Darwin. But since

then, it's been picked up by other publishers, so it's been published by Smithsonian Books in the States. And there are other deals potentially pending. (WP9 KE; Erickson 2016: 1)

The way that creators' compile their portfolios has of course to do with what work is 'out there' at any one time, however it is important to recognise creators' agency, and the way that they seek to balance work that is commercially viable with work that is enjoyable and creatively satisfying; this is illustrated by Negus et al. (2016):

You have to get something, don't you? You can either get a great project, which you'll take for a low fee because it's such a great project, or you'll get something that's basically pretty shallow and empty, and so you'll charge a massive fee. You'll get one or the other. Then the massive fees allow you to pay your rent to carry on with the little projects that you want to do, or the little money projects that you want to do. Some of the best stuff that I've been doing is very low paid but creeping up, and creeping up, and creeping up as we go on. That's just kind of the way it is, isn't it? (WP4C.2; Negus et al. 2016: 2)

In some ways, the material analysed as part of Voices mirrors the purported dichotomy – between commercial and artistic aspirations – that is often examined in accounts of creative labour (see Eikhof and Haunschild 2007). It is often suggested in academic work on creative labour that creators will seek to combine some of their time doing work that is creatively fulfilling with work that 'pays the bills'. Much of the research conducted as part of the CREATE programme attempted to bring some subtlety and nuance to this much-discussed 'split' in motivation, however it was nevertheless common for creators to see art and commerce as being in tension:

I'm good at music; I'm not good at business. Yet suddenly I find out that to prove to people I'm good at music I am required to be good at business and I despise that, because I never studied business. (WP4C.1; Barr 2016: 16)

[There is a general tension] between art and business, they are fundamentally different. Art is about creative expression, business is about making money. People get into the games industry because they love games, they generally don't get in because they want to make money. (WP1E; Phillips 2016: 9)

Relatedly, many creators spoke of their practice as a 'labour of love', stating that they would do creative work even if there were no monetary reward:

I guess it strokes our ego when we get a good comment and musicians live for that shit. Music is a labour of love. At the end of the day, even if you haven't made a penny, which is upsetting, what's more upsetting is if nobody is ever going to hear it. (WP4C.1; Barr 2016: 12)

#### **4. Business models**

One of CREATE's themes has been to investigate 'New and Emerging Business Models'. In recent years, business models have become a popular way of planning the operation of a business, identifying potential customers and sources of revenue, and planning the design and release of products. In academic investigations of the creative economy, the concept of the business model has assumed particular importance, however the research analysed as part of Voices has clearly demonstrated that creators' engagement with the concept of the business model varied widely. In keeping with much of the academic literature concerning individual creators, Voices has shown that creators have tended to understand themselves as at the heart of their creative enterprises, and to understand their personal and

professional development as intimately intertwined. It was relatively uncommon for creators to discuss business in abstract terms.

The inclination towards ‘narration’ also arguably reflected an increasing tendency for individual creators to take on roles previously played by intermediaries such as publishers (in the case of music), agents (in the case of publishing), or business directors/managers. One of Negus et al.’s (2016) respondents illustrated this, stating:

There’s no such thing as a demo any longer – I produce a finished master, virtually finished master, send it to the record labels. The record labels then choose the 10 that they like out of the 40 that they’ve got produced and only pay for the 10 that they use. So the entire speculation is in fact passed back down to the artist. [...] They get these demos, that are virtually finished records, virtually the copyright themselves, the actual piece and then they send it someone like me to do a bit of additional production, play on it, to tidy it up a little bit, and then they call it their own copyright. Whereas in fact it was the artist that created this, and the artist created the entire thing. (WP4C.2; Negus et al. 2016: 9)

Similarly, one of Grewer et al.’s (2016) respondents – an author of fiction – stated:

The first time I was published years ago I do remember that feeling of not wanting to tread on publicists’ toes. You were thinking, ‘I don’t really know what they want me to do’ and you were half waiting for them to contact you and then they weren’t doing very much because they did not have that big a budget. I think nowadays that is something that has changed – of necessity most publishers now are pretty keen for the author to do a lot of promotion and publicity. (WP1A.2; Grewer et al. 2016: 145)

It is worth noting however that within some sectors, particularly those where technology had significantly changed ‘the rules of the game’ – such as in music, publishing, and games – creators demonstrated sound knowledge of well-known business models, such as within games, the free-to-play (F2P) model versus the pay-per-purchase model. But even so, as Phillips (2016) shows in his work on games, increasingly the concept of the business model as template is being superseded by a customised approach better in keeping with the individualized nature of creative enterprises. One of Phillips’ respondents states:

[T]he problem is you’ll find case studies which argue both sides. And the game sector is absolutely terrible, universally, in thinking in a binary fashion – it’s ‘this’ or it’s ‘that’. So either everything’s going to be free to play or nothing’s going to be free to play, and the reality is of course between the two. And there’s probably a whole raft of different models, surely. (WP1E; Phillips 2016: 8)

The idea of the business model was also seen in some cases as a concept that had been imported into the world of art from the world of business and in these cases as sully the ‘purity’ of art practice. For example, one of McRobbie’s field researchers reported on a conversation she had with a designer in Berlin:

Regarding the operation of her business model – [based on my interactions with her] it would be insulting to ask her this kind of question. She sees herself as an artist and it’s the art world that is closest. [...] One would not say ‘What is your business model?’ to an artist. (WP4F; McRobbie 2015: np)



## **5. The influence of technology on individual creators' practice**

Work package leaders reported that creators working within certain sectors – particularly those disrupted by the advent and increasing acceptance of peer-to-peer file-sharing and, later, streaming services – had seen fundamental and rapid changes in recent years. Of these industries, music and book publishing emerged as two particularly important ‘test beds’ for work package leaders seeking to understand the disruptive influence of technology on creators. However, it is notable that technology did not emerge as a correspondingly central theme within other sectors, such as fashion and product design. Nonetheless, technology was seen as having changed the ‘rules of the game’ as regards cultivating new audiences for dance and theatre, and the importance of social media was noted across several of the work packages analysed.

## **6. Digital production and distribution**

Within music, for example, the advent of digital production and distribution has profoundly changed the structure and organisation of the music industry. Digital production techniques mean that copying - in the form of sampling – is now routine. Several of the work packages analysed noted that sampling allows individual creators more freedom in terms of the palette of sounds that they can employ when bringing their creative ideas to life. Negus et al. state that sampling happens across many genres of music, and allows individual creators more freedom in terms of the palette of sounds and instruments that they can utilise. One of Negus et al.’s (2016) respondents summed this up, saying ‘[I]t is nice to be able to go in and put down a celeste part without having to go and necessarily find one’ (WP4C.2; Negus et al. 2016: 7). As I further demonstrate below, copying is, therefore, now a routine part of musicianship. The advent of digital production software also links in to the tendency noted above for individual creators to take on a number of roles – traditionally the preserve of

creative intermediaries – in relation to their work, such as production and mastering in the case of musicians.

Voices research on music demonstrated the importance of digital distribution channels, in particular, iTunes, Soundcloud, Spotify and YouTube. Of these ‘big 4’ channels, Soundcloud, Spotify and YouTube are all streaming services, whilst iTunes is a media library and player. The four have different approaches to licensing (and thus remuneration) for rights-holders, with YouTube and Soundcloud taking advantage of licensing exemptions in order to pay creators and corporate rights holders as little as possible, and iTunes and Spotify, although fully licensed, also paying very little to rights-holders (Barr 2013).

In the main, individual creators were more accepting of these platforms than might reasonably be assumed. Phillips and Street (2015: 10) cite the example of a musician and lecturer who stated that digital dissemination platforms had led to a more democratic system of reward for musicians, lowering barriers to entry to the sector:

If someone’s going to be a millionaire and make a lot of money it’s because people have voluntarily put their hands in their pockets and paid their 79p or streamed it a million times on Spotify and that has generated cash. (WP4C.2; Phillips and Street 2015: 10)

Similarly, one of Barr’s respondents stated that digital distribution platforms enabled a closer relationship to be established between musicians and consumers, and handed musicians more control over how they built up their consumer base:

I’ve previously just released things in my own way and it’s always been via stuff like Soundcloud or Mediafire and stuff like that, which was something I wanted to do because I knew that I’d built up a listener base pretty much on Soundcloud. (WP4C.1; Barr 2016: 12-13)

Despite these creators' acceptance of the importance of digital distribution platforms, it is not clear to what extent they are actually exercising their agency – do they really have a choice as to whether they make use of these platforms? What are the returns in the event that creators choose to use these platforms, versus when they eschew them? These questions remain to be answered by future research.

Within those sectors most affected by advances in technology, free (or almost free) digital distribution was seen as one key way in which individual creators could build an audience. As one of Street and Phillips' (2016) respondents – a musician and lecturer – stated, 'The notion of free as a promotion tool is pretty ingrained in everybody' (WP4C.2; Phillips and Street 2015: 10). Several of the work packages analysed demonstrate that 'free' is sometimes the only option available, unless creators want to spend time chasing down infringers. This standpoint is perhaps most clearly articulated by one of Grever et al.'s (2016) respondents – a games developer – however it was a viewpoint that found echoes across a number of the work packages analysed,

[The Free-to-Play model] is actually our biggest protection of IP. [...] For example, the standard business model for our type of game historically would have been a box purchase at £30 and then a multi-subscription to play. I was in China last year, where obviously piracy is rife on everything from physical assets to IP or whatever, and I was asking them what their business model was for the games we were looking to publish on their behalf. They said – 'Well, what do you mean?' I said, 'Well, what is your business model, is it purchase price or box?' And they said, 'Well, why would you do that?' Because they only have free-to-play models. That is the only way for them to get around the piracy issues. (WP1A.2; Grever et al. 2016: 15)

Whilst for musicians working ‘on the margins’ the use of digital distribution platforms is relatively unproblematic – creators make the choice to make their music available for free in order to build a fan-base, in the hope of generating record sales and selling gig tickets – for more established artists who have secured a record contract or music publishing contract, digital distribution can be a source of tension between musicians who want to get their music ‘out there’ and rights holders who want to extract income from consumers.

## **7. Social media**

As noted in the introduction, many of the projects analysed as part of Voices were designed and scoped up to four years ago; this ‘lag’ between project design, fieldwork, publication and meta-analysis means that social media occupy a relatively peripheral role in the material analysed. It was possible to draw some inferences from the work packages studied, however. In particular, Dowthwaite’s (2014, 2015a,b) work investigated the use of social media amongst web-comic creators. Dowthwaite (2015a) notes that social networks are complex systems and users’ interactions with social media are rarely described in situ; her work demonstrates the value of relating users’ interactions with social media to the technology that is readily available, the business strategies of creators, and the norms of the industry within which they work. Dowthwaite notes that due to the particularities of the web-comics sector (web-comic creators rely entirely on websites and social media platforms in order to get their work seen, in contrast to many of the other sectors investigated) respondents’ use of social media was extremely sophisticated.

For these creators, first and foremost it was vital to get their work seen, and they often had strategies that took into account the strengths of different social media platforms. For example, whereas Tumblr (a primarily visual medium) was seen as crucial for disseminating images and was the preferred medium for Dowthwaite’s respondents, Twitter enabled quick

sharing and greater ‘reach’, and Facebook was seen as the best platform for cultivating a community of fans due to the lack of word limits and the sense of greater permanence enabled by the creation of pages. Her research illustrates how useful social media are for building a personal brand, and driving sales, with one respondent stating, ‘there’s some people that do follow me on Facebook that will buy pretty much anything that I put out’ (WP2A; Dowthwaite 2015a: np). However in an echo of research analysed from the music industry and reported on above, it was recognised that a social media presence did not always translate into earnings, with one respondent maintaining ‘clicking is free and they’ll look but they don’t, they can’t reach into their pockets or anything’ (WP2A; Dowthwaite 2015a: np).

For Dowthwaite’s respondents however, there was a downside to the ubiquity of social media, and the low barriers to use: first, there were concerns about getting ‘lost in the crowd’, and second, the indiscriminate ‘sharing’ (without attribution) of content was seen to harm creators’ brand-building strategies, as illustrated by another of her respondents:

[I]t’s usually kids, they’re just like ‘This is a thing I like’, they don’t understand that it needs attribution. [...] but if that person hadn’t put it up on Tumblr, none of those people would have seen it anyway. [...] Yes it would have been nice if they put a link under it, it’s annoying, but is it a crime? It’s not like even dropping litter, it’s like breaking wind, it’s like, well, you know, it’s not great but it’s not going to kill anyone. (WPA2; Dowthwaite 2015a: np)

In asking, ‘but is it a crime?’ this respondent also presages some of the forthcoming discussion about the tension between legal definitions of IP and the common-sense understanding of IP that prevailed amongst individual creators, which is explicitly informed by their tacit understanding of the sectors within which they work. I return to the issue of social media below, in my discussion of copyright infringement (see *Informal regulation and social media ‘shaming’*).

## 8. Copyright and IP

Another of CREATE's key concerns is the role that IP – specifically, copyright – plays in the day-to-day practice of individual creators, and this was reflected across the body of work analysed here. The projects sought to understand both the *actual* and *perceived* value of IP, what meanings individual creators ascribed to IP and the various mechanisms by which IP could be protected. A core theme within many of the work packages analysed was a tension between legal definitions of IP and the common-sense understanding of IP that prevailed amongst individual creators, who tended to see their IP as 'the legal embodiment of their creative identity' (Street and Phillips 2015: 6).

In the main, creators demonstrated a sound awareness of basic IP issues. Across the work packages analysed, a general rule of thumb was identified, however, which holds that creators with more experience had a superior understanding of IP, whereas confusion about copyright and IP can act as a disincentive to creativity among 'newbie' creators. This is illustrated by this representative quote from a video artist and animator,

My background is in research market insights, so I'm very much marketing, audience data collection. I've had dealings with our licensing department. I was a little bit on top of what you can have cleared, what you can't have cleared. [...] I was completely educated on the complication of using other people's work [however, it is] very complicated, very administratively heavy to the point where you can really curb creativity, at least from a sort of newbie perspective. (WP9KE; Erickson 2016: 2)

Similarly, two of Barr's (2016) respondents were very aware of the gaps in their knowledge regarding what they called 'the business side of things':

I'm aware of them (the various rights) but not the specifics of them and I'm aware that I should probably read up on them and learn more. (WP4C.1; Barr 2016: 17)

Basically I've focused so much on the musical side of it that I've never really dealt with the legal or business side of things. (WP4C.1; Barr 2016: 17)

Creators who had experience demonstrated a broad-based knowledge of IP protection measures, with Grewer et al.'s (2016) respondents (primarily established individual creators, microbusinesses and SMEs, who were being asked specifically about their income-generation strategies) in particular utilising a range of protections, including trademarks, design rights, patents, licensing agreements and non-disclosure agreements within contracts. One of Grewer et al.'s (2016) respondents emphasised that the law and legal advice could and should be supplemented by in-depth, sectoral knowledge and 'know-how':

It is an area that I am interested in and I research thoroughly, so I know what my position is in these types of situation, although there are some grey areas. I don't leap to assumptions either and I would make sure that I have research to back me up if I ever decided to take any action against someone else.

It's important for designers to have a good knowledge and understanding of their design field, including a solid contemporary and historical contextual awareness, and to understand that while lawyers may have expertise in the legal aspects, they may not know how your work relates to what already exists. (WP1A.2; Grewer et al. 2016: 59)

Many creators saw the value of their creative activities residing in their *brand identity*. Respondents cited in Grewer et al. (2016) note that trademarks are key to building a strong brand:

The protection comes from the strength of the brand and the fact that I have got that registered trademark and we are becoming known for offering that service. (WP1A.2; Grewer et al. 2016: 75)

The copyright and trademarks are probably our key strengths. We could have gone for design patents for some of the things we are doing, but we didn't, because registration was giving away way too much, especially in America where you are having to commit the details of what you are doing. [...] From the first meeting we ever had with the IAC [Interactive Corporation], the strength was building a brand. If you build a brand and you are first to market it is very, very difficult for someone else to come in behind you. (WP1A.2; Grewer et al. 2016: 11)

However, there was a general sense – in line with that noted above – that individual creators and smaller businesses were less savvy when it came to making their IP strategy work for their brand. One games developer stated that:

Most games studios that are technically capable of building games don't necessarily understand the underlying value behind the thing they have just built. I think that brand and intellectual property are horrendously undervalued by a lot of people. This is something that the larger publishers probably understand better than most. (WP1A.2; Grewer et al. 2016: 7)

Other creators had a *skills-based* understanding of IP, noting that for them, their IP resided in their broad-based experience, and in the 'know-how' that they brought to their creative practice:

I would say that it is me, because I am at the hub of everything. [...] That is all part of my story-telling, that is all part of my UPS [sic] if you like. It's about me,



it's about my intellectual whatever. Your main IP, it is your concept, which comes from your own experiences and yourself and it is communicated through what you use. [...] It is part of who I am and how I operate. (WP1A.2; Grewer et al. 2016: 130)

In a related vein, other creators felt that their IP resided in being difficult to copy. An artist and product designer interviewed by Grewer et al. (2016) - who produced one-off, bespoke ersatz hunting trophies from fabric – said:

I think because [my work] is so labour-intensive that it is not possible to copy my work really, because I even make the eyes, you know, every wee bit is done in detail. There are lots of simple versions coming out, but it is very hard to copy in detail. (WP1A.2; Grewer et al. 2016: 80)

This designer relied entirely on automatic copyright protection, and had not sought to register designs or trademarks. Bespoke commission work of this kind was understood as a time-consuming but ultimately very profitable business strategy.

## **9. Cloning and copying**

Creators within games, music, and fashion in particular noted that copying was absolutely central to the functioning of the economy in these sectors. For example, within the games industry one of Phillips' (2015) respondents states that 'cloning' or copying games, is common practice and is accepted as such by creators:

Cloning is a standard business [...] because it's an easy way to make money. [...]

A lot of clones are released by a company which only releases one game, exists for about a week, after the first paycheck comes in it disappears to never be seen again. (WP1E; Phillips 2015: 147)

Within music, Negus et al. (2016) similarly emphasise the centrality of copying to the way that the economy functions. Above, I demonstrated that copying – in the form of sampling – was increasingly seen as standard practice by individual creators in the music industry, though it took some time for it to become normalised. One of Negus et al.'s (2016) respondents stated:

[In the 1980s] all the musicians at that time would be saying 'Well sampling is just stealing. The only reason these guys are doing it is because they can't play, etc., etc., etc.' But we were starting to realise that it also created an aesthetic of its own that was the one that was happening at that time and that was popular. [...] So we put vinyl sound onto live multitrack recorded stuff, much to the distress of our engineer, who'd been from the '80s. (WP4C.2; Negus et al. 2016: 10)

Negus et al. (2016: 3) note that many rock and pop musicians 'create music and worry about copyright later'. These authors are clear that musicians may or may not be aware of copying from others, and in the main, 'their use of other material does not become an issue unless it is likely to be recognized in the public domain' (Negus et al. 2016: 3). One of their respondents stated that the more likely an audience is to notice copying, the more careful musicians are when writing:

When I know a song is gonna get a lot more airplay, or there'll be a lot more people listening, you do become more aware. You definitely don't wanna like rip something that someone's gonna hear. [...] So I suppose I have thought about since songs have been played on the radio, you just have to be [...] extra careful, I guess. (WP4C.2; Negus et al. 2016: 3)

Another of Negus et al.'s (2016) respondents – a band manager – spoke about how he was more concerned about copying among his established acts, than among up-and-coming acts.

I think you've got to be careful who you're referencing, I suppose. But I think [...] which ones? I think I'd be less worried about [band name of relatively unknown act]. Maybe it would generate a bit of press as a result of it sounding like it, and therefore it would help sort of big things up, and I don't think it would be a big problem in terms of them turning round and suing this young band who haven't got any money. So, like I would say it's less of a worry, but, than the [band name of high profile act], when someone could possibly turn round and have a go, because they know that they're going to achieve something if they do, even though there's not much in it, I think it's just being safe to say that, well, here's the piece of paper which says that, you know, you can't do that. (WP4C.2; Negus et al. 2016: 3-4)

Within fashion, McRobbie (2015) states that, particularly amongst small-scale enterprises,

There is a stark anomaly [...] in that IP and copyright protection simply do not figure as important or indeed as directly relevant to the design activity. [...] Our research shows a tendency to 'shrug it off', implying that theft of ideas is seen as merely one of the pitfalls of the occupation, something that can on occasion be contested, most effectively through use of social media. This situation is confirmed by legal consultant RA Bretz who had a strong position arguing that in fashion 'IP does not matter' indeed 'copyright law for fashion is a nonsense'. (WP4F; McRobbie 2015: np)

McRobbie quotes one well-known Berlin designer who emphasizes the centrality of copying to the way fashion works:

I myself am copying clothes that are older than 100 years, and taking ideas from this time. [...] This jacket is inspired by a vintage fencing jacket dating back from the late 19<sup>th</sup> century. (WP4F; McRobbie 2015: np)

As within the games and music sectors, the realization that copying was central to the fashion economy – and that there was little in the way of recourse within the law - led to a relatively laissez-faire attitude amongst the designers interviewed:

Friends are often sending me pictures of things ‘similar’. [...] But maybe they have copied, maybe not [shrugs]. (WP4F; McRobbie 2015: np)

It could happen, but I have plenty of ideas all the time, so for me it’s not a problem. It is easy for someone to copy something and then change a button. (WP4F; McRobbie 2015: np)

I would feel quite privileged if my work got copied. It’s nice to be credited. It’s nice if people acknowledge the fact. But more than anything I think that I’ll have other ideas. But a lot of people don’t think that. Even in art school, they get attached to certain stupid things like ‘Oh, you’ve got a blue flower in your work just like me’ and you’re like ‘It’s just a fucking blue flower, anyone could have done it.’ I think it says a lot about their creativity. (WP4F; McRobbie 2015: np)

## **10. Copyright infringement and IP disputes**

Copyright infringement and IP disputes were common, however, because of the time and expense involved in pursuing copyright infringement and IP disputes, only the most established businesses with the highest turnover were able to pursue compensation.

Individual creators and microbusinesses often felt powerless to act if they found out their work had been copied:

I wasn't able to do anything when I saw what looked very much like my work in the shop window of [brand]. It happens all the time, but of course they cannot compete with the actual quality of the designed work. (WP4F; McRobbie 2015: np)

We produced a wine rack, which was really popular and successful and then my brother saw it on sale elsewhere. It was leather, but not with our little stamped leather logo on it, and then we started seeing them all over the place. We just phoned them up, that company who were selling them and said, 'Please stop.' And they said, 'All right then', and they did not stop.

So after that we just said, 'Shall we do anything else?' We phoned them one more time and said we will do something about it, but we never did. [...] That was frustrating but there was no way we were going to be tempted to do anything else about it. Because it was a good product and if we had made a big meal of it, of selling the product, maybe we could have sold thousands and thousands but as it was we sold hundreds and hundreds and it was never going to be worth it to start spending the time or the money on taking them to court. (WP1A.2; Grewer et al. 2016: 71)

McRobbie (2015: np) found that larger design houses also understood that copying was a fact of life within the fashion industry, but in relation to these larger companies, she notes that 'vague copying is tolerated only to be followed by a tough approach on key items, especially those which exemplify the brand identity'. McRobbie cites the examples of Vivienne Westwood and Margaret Howell as two large design houses that aggressively

pursued infringement of key items, or items that these designers considered central to their brand identity.

Individual creators and microbusinesses in general felt that the law as it stands did not offer them adequate protection against infringement, in part because of the high cost of pursuing restitution and the small returns that could be expected in the event of a successful claim (as outlined above by Negus et al.), but also because what constituted ‘infringement’ for creators was often at odds with the technicalities of the law. For example, in relation to games, Mac Sithig (2014: 18) recounts a claim of infringement brought by developer Nova Productions, where:

A game similar to one already on the market was found not to breach the copyright of the developer of the ‘original’ – essentially on the grounds that no code had been copied and the similarity was essentially one of gameplay or the game mechanics.

This raises questions of whether the current copyright framework offers appropriate protection for creators, who – as noted above – often subscribe to the idea of IP as residing within their brand identity, and the look and ‘feel’ of their products. Phillips (2015) illustrates this in relation to games, stating:

In legal terms, the similarities between Pocket Money, Jackpot Pool, and Trick Shot were considered negligible. Yet for developers – with their assumed knowledge of the production and function of games – such legal evaluation is equated to that of a novice. As Participant B notes, ‘We can tell that they probably took most of our values directly out of our game, because we made the game. We know how things feel; we know how they move. [...] We know that this is a clone.’ (WP1E; Phillips 2015: 148)

A respondent to Erickson explained:

I think that within the games sector you are in a different position compared to film and TV, in that you can't copyright gameplay ideas, anyway. So really the only IP that we are going to create is the product we make. There's nothing stopping anybody saying 'Oh, that did really well, we'd really like to do that and make our own Jack the Ripper documentary' and you know, reusing the materials and heavily taking the gameplay style and things like that. There's nothing stopping them [from] doing that. The completed thing will be ours to do what we want with, but beyond that, there's nothing stopping anybody else [from] doing something. (WP9KE; Erickson 2016: 3)

## **11. Informal regulation and social media 'shaming'**

Because of the difficulty of pursuing restitution for infringement, creators often took matters into their own hands. As noted above, a number of respondents invoked the idea of a 'code of conduct' that individual creators and small businesses – often characterised as 'indies' – tended to abide by. This 'code' acted as a kind of informal regulation, prohibiting unauthorised copying and other unethical business practices. If the 'code' was broken – for example, if a game was cloned or a cheap 'knock off' of a design was produced – creators employed a range of tactics designed to encourage the infringer to withdraw their unoriginal product from sale, or to otherwise damage the infringers' profits – the hope was that this would both solve the immediate dispute and also act as a warning to others who may attempt to copy and get away with it.

McRobbie (2015) reports on the activities of one well-known Berlin designer, who found that one of her designs had been copied:

Most striking was the case described by Esther Perbandt where a cheap copy of one of her leather bags (selling at 380 Euros) was boldly displayed in the window of a shop round the corner from her own boutique for just 80 Euros. Her partner went out one night and festooned the window with stickers showing the name and logo of Esther Perbandt where the bag was displayed. This public shaming worked in that the bag was quickly removed and never once re-appeared. (WP4F; McRobbie 2015: np)

Social media were also often used to publicly ‘shame’ infringers. Due to the networked nature of social media, the potential for reputational damage to the infringer was high – creators who had been copied tended to draw down resources from the communities within which they were embedded, encouraging friends, colleagues and customers to ‘share’ details of the infringement in the hope of reaching as wide an audience as possible.

As Phillips’ (2015) work demonstrates, ‘indie’<sup>3</sup> producers tended to pull together as a community: two of Phillips’ (2015) respondents shed light on how this happens, stating, ‘what’s started to happen is that thanks to social media, thanks to the informal communication channels, the industry overall will recognise these guys are ripping off these guys’ (WP1E; Phillips 2015: 149) and that ‘if something wrong happens, the industry jumps in nowadays and that’s nice’ (WP1E; Phillips 2015: 149). McRobbie notes that in Berlin, the designer quoted previously has long been one of the most prominent decrying the bad practice of copying, and often used social media as a means to ‘shame’ infringers, saying ‘It is just to tell the world: “listen, your copying did not go unnoticed.”’ (WP4F; McRobbie 2015: np).

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<sup>3</sup> ‘Indie’ is normally defined as cultural production ‘free of corporate control’ (Waits 2008: 83), which represents an institutional and aesthetic challenge to large-scale, corporatized cultural production. The idea of an indie sensibility found expression within a range of sectors analysed by CREATE work package leaders, including product design, games, publishing and music.



One fascinating vignette comes from Grewer et al.'s (2016) work. These authors interviewed a young textiles designer who had been (wrongly) accused of infringing another designer's work. Whilst many of the work packages reported on instances where a creator felt their work had been infringed, this designer was able to say what it felt like to be on the other side of the fence, so to speak.

About two weeks before I was due to show [at 100% design, a large trade fair] there I got a lawyer's letter through the post, saying that their client was claiming that I was copying their design, which was really interesting because a lot of people are really scared about having their designs copied and they are so protective about this. But this was somebody saying that I was copying them. They were sending me a letter saying, 'Cease and desist', that the design was not mine, and that she wanted damages. She wanted me not to go to *100% Design*, she wanted me to take it down off my site, and they said if I took it to *100% Design* they would contact the show organisers and they would pull down my stand. (WP1A.2; Grewer et al. 2016: 58)

As Grewer et al. (2016) detail, this respondent's accuser had a European Registered Design for her concept (a style of pleat), which was the basis of the infringement claim. The respondent quickly realised that her accuser had no case. However it was clear that the experience was still extremely stressful for her, and it is worth quoting her description of the experience in full:

There were so many layers that I could unpick: first of all my use of this pleat pre-dated hers by about six years and I could prove that. I had press, media – images of me in the Royal College of Art *Prospectus* showing me at my desk developing those designs – so there was all this evidence to show that this was my design prior to her registration. Second to that, my design was in a different

market, using very different techniques, materials, colours and patterns. But then there was also the fact that it used a generic pleat – this is an origami structure that dates back hundreds of years and if you look up any origami books there are instructions out there on how to make those particular pleats. So it is not something you can copyright [nor register as a design]. She did not have any rights to it, and basically, no leg to stand on.

I had to put together all this evidence though, and it took out so much time at one of the busiest, most stressful times of my working year. I was able to do the show, as fortunately I got all the information to her lawyers in time. I kind of felt sorry for her in the end because somebody has made money out of the fact that she has registered the design. They have got a fee for doing that for her and I completely picked apart her application. There was also no background to her work anywhere – she did not have a website, she had never done any exhibitions, she had never published her work online, it was never in any magazines. How could she possibly think that I had copied her? (WP1A.2; Grewer et al. 2016: 58-59)

## **12. Conclusions**

It is clear from the material analysed here that despite twenty years of targeted intervention on the part of government and policymakers, building a career in the creative economy is still a precarious venture. Research has shown that creative work remains insecure, there is a culture of long hours, and an expectation that creatives will work for free in order to ‘get a foot on the ladder’, or in an attempt to secure further work (Atladottir et al. 2013). Few of CREATE’s funded work packages were explicitly concerned with understanding the characteristics of creative labour as such, and yet, the primacy of this mode of labour organisation within the material analysed was striking.

Of particular sociological interest is the way in which this analysis has demonstrated that creators tend to ‘narrativise’ the growth and development of their careers or businesses (Beck and Beck-Gernsheim 2002; LaPointe 2010; McRobbie 2015, 2016). Creators tended to understand themselves as at the heart of their creative enterprises, and to understand their personal and professional development as intimately intertwined, instead of discussing business in abstract terms. In this respect, the idea of ‘career identity’ assumes particular importance. LaPointe (2010: 1) states that the idea of a career identity ‘has often been considered essential in helping individuals to deal with the shifting boundaries of contemporary careers’. LaPointe’s (2010) work is particularly useful when considering the material gathered from across the CREATE work programme, which – as noted above – was often concerned with self-employed or freelance creators, for whom ‘narrating’ the story of their career development was a way of retrospectively lending structure and meaning to their experiences.

The prevalence of self-employment and freelancing within the work packages analysed adds weight to recent research that suggests that the overwhelming focus on *creative businesses* (on the part of government, policy makers, and creative intermediary organisations charged with supporting and regulating the creative economy) may be misguided (Bridgstock 2011; Schlesinger et al. 2015). Rather than attempt to understand the creative economy strictly in terms of businesses on the one hand as opposed to ‘individual creators’ and their IP-generating activities on the other, the material analysed here suggests that it makes better sense for research programmes such as CREATE to tackle the issue of *creative careers*, and to examine exactly how individual creators oscillate between drawing down income from their individual IP-generating activities, the work-for-hire model common to freelancers, and salaried work. To then link creators’ career-building activities to different policy, legal and regulatory frameworks in operation at a range of scales would enable a more

critical engagement with the assumptions that underpin much academic research on the creative economy, and much of the policy thinking as well. For example, in taking this approach, we might be able to distinguish which initiatives or policies actually help creators to make a living, rather than – as is arguably the case at the moment – assuming that policies that contribute to growth automatically also help individual creators. In taking this approach we might also begin to critically assess the efficacy of the cluttered landscape of intermediary agencies that are charged with regulating and organising the creative economy (see Schlesinger et al. 2015).

It is important, however, to remain sensitive to the fact that despite the increasing importance of individualization for the way that labour is organised within the creative economy, this is not incompatible with the building of communities and networks. On the contrary, it is clear that individual creators draw down resources from the communities and networks within which they are embedded, and that processes of mutual support and learning are central to these often extremely disaggregated groups (Peppler and Solomou 2011). Increasing use of social media is one key way in which individual creators seek to do this. However, it is worth noting that much of the research analysed here is up to three years old. As a result of this, social media have not assumed as central a role as might be assumed if these work packages were being scoped and conducted today.

Relatedly, the theme of technological change is also one that would almost certainly assume greater importance were the analysed work packages being conducted contemporaneously. However, that should not detract from the fact that whilst the theme of technological change was one that appeared as particularly important across some of the work packages analysed – most notably those concerned with music and publishing – ‘technology’ did not emerge as a particularly important cross-cutting theme. Based on the material analysed here, a productive line of inquiry for future research would be to

interrogate the disconnect between the academic and policy imaginary that maintains that technology has produced fundamental change across the creative economy, and how in fact individual creators actually perceive technology and technological change. It is necessary to ask ourselves, as researchers, are we overstating the importance of technological change for the functioning of the creative economy? An alternative question would be, are we asking the *right* questions about technology when approaching individual creators?

Almost all of the work packages analysed contained testimony from creators whose IP had been infringed; however, almost none of these individuals had pursued restitution for the infringement. Rather, because of the centrality of copying to the functioning of certain sectors (such as fashion, games and music), plus the cost of pursuing restitution and the paltry compensation that might be expected even in the case of a successful claim, individual creators tended either to shrug it off, or, alternatively took matters into their own hands, engaging in social media ‘shaming’ campaigns designed to damage the infringer’s reputation and profits.

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